UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KYLE STIFFARM,

Plaintiff,

v.

CITY OF PULLMAN POLICE DEPARTMENT and ANDREW WILSON,

Defendants.

NO. CV-04-0414-EFS

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT WILSON'S MOTION FOR RECONSIDERATION

Before the Court, without oral argument, is Defendant Andrew Wilson's Motion for Reconsideration (Ct. Rec. 120). In his motion, Defendant Wilson moves the Court to reconsider three rulings rendered in the Court's August 8, 2006, Order Granting in Part and Denying in Part Defendant Andrew Wilson's Motion for Summary Judgment Re: Qualified Immunity ("Qualified Immunity Motion") (Ct. Rec. 115). Specifically, Defendant Wilson moves the Court to reconsider its denial of qualified immunity to Defendant Wilson on Plaintiff's (1) Sixth Amendment claim, (2) Fourth Amendment unlawful arrest claim, and (3) Fourth Amendment excessive use of force (delayed flushing) claim. In his Motion for Reconsideration, Defendant Wilson raises no new arguments, but instead simply asks the Court to reconsider its rulings on the three above-listed claims in light of the arguments offered in the parties' original

Qualified Immunity Motion briefing. After reviewing the materials filed in connection with Defendant Wilson's Qualified Immunity Motion and relevant authority for a second time, the Court is fully informed and hereby grants in part and denies in part Defendant Wilson's Motion for Reconsideration by granting qualified immunity to Defendant Wilson on Plaintiff's Sixth Amendment claim and upholding the Court's prior denial of qualified immunity on the other two claims.

I. Sixth Amendment Claim

The Sixth Amendment states in part: "In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusations." U.S. Const. amend VI. "Charging documents are tested by whether they sufficiently apprise[ ] the defendant of what he must be prepared to meet." *United States v. Rojo*, 727 F.2d 1415, 1418 (1983) (citing *Russell v. United States*, 369 U.S. 749, 763 (1962) (citations omitted)) (internal quotations omitted). In *Hamling v. United States*, the Supreme Court stated:

> Our prior cases indicate that an indictment is sufficient if it, first, contains the elements of the offense charged and fairly informs a defendant of the charge against which he must defend, and, second, enables him to plead an acquittal or conviction in bar of future prosecutions for the same offense. It is generally sufficient that an indictment set forth the offense in the words of the statute itself, as long as those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished. Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances as will inform the accused of the specific offence, coming under the general description, with which he is charged.

418 U.S. 87, 117 (1974) (internal citations and quotations omitted).

In *Rojo*, the Ninth Circuit concluded a federal citation, which served as the charging document in the *Rojo* defendant's case and only referred to the statutory code for the offense charged, i.e. "Title 18, Section 641," was constitutionally defective under the Sixth Amendment. 727 F.2d at 1418. In reaching this conclusion, the Ninth Circuit emphasized the citation's failure to (1) recite any act allegedly committed by the *Rojo* defendant or (2) include any facts, such as the date, time, or location of the allegedly offensive conduct. *Id.* In addition, the Ninth Circuit believed it was noteworthy that the text of 18 U.S.C. § 641, the statute under which the citation was issued, "sets out several possible violations" and the citation did not indicate which particular violation the *Rojo* defendant was being charged with. *Id.* Based on these factors, the Ninth Circuit rejected the Government's argument that the *Rojo* defendant "knew the nature and cause of the accusation" contained in the citation "because he could look up 18 U.S.C. § 641" and concluded the citation violated the Sixth Amendment. *Id.*

In light of the Ninth Circuit's broad discussion of the *Rojo* citation's various deficiencies, rather than focusing on the simple fact that the citation did not list the statutory elements of the offense being charged, this Court concludes that charging documents are not *per se* defective under the Sixth Amendment simply because they do not recite the elements of the offense charged. Although the Supreme Court has explained that an charging document is sufficient under the Sixth Amendment if it (1) contains the elements of the offense charged, (2) fairly informs a defendant of the charge against which he must defend, and (3) enables the defendant to plead an acquittal or conviction in bar

of future prosecutions for the same offense, this does not mean a charging document is necessarily defective under the Sixth Amendment if it does not contain the elements of the offense charged. *See generally Hamling*, 418 U.S. at 117. No federal case cited by Plaintiff, nor located by the Court, holds that a charging document *must* list each element of the offense charged. Instead, the only apparent requirement for satisfying the Sixth Amendment in this regard is that the charging document's language must "sufficiently apprise[ ] the defendant of what he must be prepared to meet." *Russell*, 369 U.S. at 763. If the charging document meets this requirement without including the elements of the offense, the defendant's Sixth Amendment right to be informed of the nature and cause of the accusations charged against him is met. *See generally Rojo*, 727 F.2d at 1418.

In this case, the Court finds the underlying citation issued by Defendant Wilson sufficiently apprised Plaintiff of what he must be prepared to meet in his criminal prosecution. Unlike the citation in *Rojo*, Plaintiff's citation included more than just the statutory code for the charged offenses. Plaintiff's citation informed Plaintiff that he was being charged with "Resisting Arrest" and "Obstructing an Officer." Furthermore, the statutory codes listed in the citations, i.e. R.C.W. §§ 9A.76.020 and 9A.76.040, only set forth one possible offense for each violation charged, unlike the *Rojo* citation, in which the defendant's unspecified violation could have been one of several possible offenses proscribed by 18 U.S.C. § 641. Furthermore, Plaintiff's citation, unlike the Rojo citation, listed the time, date, and location of the allegedly offensive conduct, which further supports a conclusion that the citation

apprised Plaintiff of the cause of the charges being brought by Defendant Wilson. Finally, because Plaintiff ultimately achieved favorable outcomes on both charges listed in the citation by way of a voluntary dismissal and outright acquittal after a bench trial, the Court believes it would be unreasonable to conclude the citations did not sufficiently apprise Defendant "of what he must be prepared to meet." Instead, the nature of Plaintiff's favorable outcomes, especially his acquittal on the "Obstructing an Officer" charge, lend significant credence to the conclusion that Plaintiff knew the nature and cause of the offenses charged in his citation as evidenced by his ability to mount a winning defense on both charges.

Because the Court finds Plaintiff's citation sufficiently apprised Plaintiff of what he had to be prepared to meet in his criminal prosecution, the Court concludes Plaintiff's Sixth Amendment rights were not violated by Defendant Wilson's failure to list the elements of the offenses being charged on the citation. Because the Court finds Plaintiff's Sixth Amendment rights were not violated, Defendant Wilson, despite the Court's prior ruling, is in fact entitled to qualified immunity on Plaintiff's Sixth Amendment claim. *See Saucier v. Katz*, 533 U.S. 194, 201 (2001). For these reasons, the Court supplants its August 8, 2006, qualified immunity ruling with the ruling and explanation provided above. Accordingly, Defendant Wilson is granted qualified immunity on Plaintiff's Sixth Amendment claim.

II. Fourth Amendment Unlawful Arrest Claim

The Court denies Defendant Wilson's Motion for Reconsideration to the extent it reasserts Defendant Wilson is entitled to qualified

immunity on Plaintiff's Fourth Amendment unlawful arrest claim because Defendant Wilson had "arguable probable cause" to arrest Plaintiff. When the facts alleged in the parties' supporting materials are considered in the light most favorable to the Plaintiff, the Court finds no reasonable officer in Defendant Wilson's position, even if the "dust had not settled," would have reasonably, but mistakenly, concluded probable cause existed to arrest Plaintiff. For this reason, Defendant Wilson is not entitled to qualified immunity under his proffered "arguable probable cause" theory and this portion of Plaintiff's Motion for Reconsideration is denied.

III. Forth Amendment Excessive Use of Force (Delayed Flushing) Claim

After reviewing the parties' arguments concerning whether Defendant Wilson is entitled to qualified immunity on Plaintiff's Fourth Amendment excessive use of force claim for delaying efforts to flush pepper spray from Plaintiff's eyes, the Court reaffirms the position taken in the August 8, 2006, Order. Defendant Wilson is not entitled to qualified immunity on this claim. For this reason, this portion of Defendant Wilson's Motion for Reconsideration is denied.

Accordingly, **IT IS HEREBY ORDERED:** Defendant Wilson's Motion for Reconsideration **(Ct. Rec. 120)** is **GRANTED IN PART** (qualified immunity granted on Plaintiff's Sixth Amendment claim) and **DENIED IN PART** (qualified immunity denied on Plaintiff's Fourth Amendment unlawful arrest and Fourth Amendment excessive use of force (delayed flushing) claims).

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IT IS SO ORDERED. The District Court Executive is directed to enter this Order and provide a copy to counsel.

DATED this 24th day of August 2006.

s/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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